IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.27285 of 2006

and

M.P.No.1 of 2006

Azalea Veronica ... Petitioner

Vs

State rep. by
Inspector of Police,
Airport Police Station,
Chennai. ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the F.I.R. in Crime No.81 of 2003 dated 07.06.2003 pending investigation on the file of the respondent police.

For Petitioner : Mr.V.Krishnamoorthy

For respondent : Mr.P.Kumaresan,
Addl. Public Prosecutor

O R D E R

Learned counsel for the petitioner submits that the petitioner has come forward with this petition seeking the relief of quashing the first information report in Crime No.81 of 2003 on the file of the respondent police dated 07.06.2003, pending investigation.

2.Learned counsel for the petitioner submits that the petitioner is said to have left Chennai on 04.06.2003 to reach U.S. on 06.06.2003 and the petitioner was deported to Chennai on the ground that she has gone to U.S.A. on a forged visa. It is also submitted by the learned counsel for the petitioner that the complaint was given by the Senior Immigration Officer to the respondent police and the respondent police, in turn, registered a case against the petitioner under Section 12 (1) (b) of the Passport Act.

3.Learned counsel for the petitioner submits that this petition for quashing is filed on legal ground that as per Section 167(5) Cr.P.C., the investigating agency could have completed the investigation within a period of six months in view of the fact that the offence registered against the petitioner comes under the category of summons case. It is pointed out by the learned counsel for the petitioner that the offence

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alleged against the petitioner is punishable with imprisonment upto two years or with fine upto Rs.5,000/- or both and the trial is to be proceeded under the summary procedure.

4.Learned counsel for the petitioner also contended that under Section 167(5) Cr.P.C., in the event of the investigation not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the Officer making the investigation satisfies the Magistrate and for special reasons and in the interests of justice, the continuation of the investigation beyond the period of six months is necessary. It is submitted by the learned counsel for the petitioner that the investigating officer has not resorted to such request before the learned Magistrate. Therefore, it is submitted by the learned counsel for the petitioner that the First Information Report is liable to be quashed, in view of the above said contravention of Section 167(5) Cr.P.C., by the respondent herein.

5.Learned counsel for the petitioner placed reliance in support of his contention on the following decisions:

1.Jagannathan Vs. State (1983 LW (Crl.) 250)
2.Jitender Mohan Gupta Vs. State (1992 CRI.L.J. 4016)
3.State of Haryana Vs. Bhajan Lal (1992 SCC (Cri) 426)

6.Per contra, learned Additional Public Prosecutor contended that in view of the registration of the case under the Passport Act, the investigating agency has to get the sanction order from the Government to prosecute the accused under Section 15 of the Passport Act. It is submitted by the learned Additional Public Prosecutor that the communication was sent by the respondent police on 09.08.2005 seeking the sanction order to prosecute the petitioner herein. It is also brought to the notice of this Court by the learned Additional Public Prosecutor that after getting the sanction order, the investigating officer has to obtain the opinion from the Public Prosecutor and only thereafter, he has to file the charge sheet in this case. Now, it is submitted by the learned Additional Public Prosecutor that after obtaining sanction on 03.01.2007, the respondent police filed a charge sheet against the accused for the offence under Section 12(1)(b) of Passport Act on 04.01.2007 before the learned Judicial Magistrate, Alandur and the case was taken up on file in C.C.No.23 of 2007. Therefore, it is contended that there is no contravention of the provision under Section 167(5) Cr.P.C.

7.I have carefully considered the rival contentions put forward by either side and also perused the materials available on record including the first information report and the communication received by the learned Public Prosecutor from the respondent police in respect of obtaining sanction from the Government and also filing charge sheet on 04.01.2007.

8.Before proceeding to consider the submission of the learned counsel for the petitioner, it is pertinent to extract Section 167(5) Cr.P.C., which reads hereunder:

> If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months

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from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

9.A reading of the Section 167(5) Cr.P.C. makes it crystal clear that if the offence is relating to summons case and the investigating agency may not conclude the investigation within a period of six months from the date on which the accused was arrested, then the investigating officer shall satisfy the learned Magistrate by assigning special reasons for the continuation of the investigation beyond the period of six months and also by considering the interests of justice. In this case, the undisputed fact remains that the respondent herein, who is the investigating officer in this case has not resorted to take any step as per the mandatory requirement under Section 167(5) Cr.P.C. to satisfy the learned Magistrate to continue the investigation beyond the period of six months by assigning special reasons. It is also not in dispute that the petitioner was arrested on 07.06.2003 and therefore, the respondent police should have completed the investigation on or before 07.12.2003. The materials placed before this Court by the learned Additional Public Prosecutor viz, the letter sent by the respondent police to the learned Public Prosecutor discloses that the case diary was forwarded to the Government through the Deputy Commissioner of Police only on 09.08.2005 for obtaining sanction. Therefore, there is a delay of nearly three years to send the case diary for obtaining sanction. The further communication of the respondent police addressed to the Public Prosecutor discloses that after obtaining the sanction on 03.01.2007, charge sheet was filed against the petitioner on 04.01.2007 and the case was taken on file in C.C.No.23 of 2007.

10.Learned counsel for the petitioner rightly placed reliance on the decision of Delhi High Court in Jitender Mohan Gupta Vs. State (1992 CRI. L.J. 4016), which reads as follows:

"The inherent power has to be invoked particularly when from the bare reading of the First Information Report or the complaint on its face value does not constitute an offence against the accused. Once the Court comes to the conclusion from the record made available that no case is made out against the accused then there cannot be any ban on the exercise of inherent power where the Court feels that there is an abuse of process of the Court or other extraordinary situation excites the Court's jurisdiction. It is no doubt true that after the filing of challan the Court ought not to continue with the decision. But the facts of each case are to be looked into before permitting the ouster of Court's jurisdiction. In the instant case, the accused had come to the Court even when the case was under investigation and the challan charge sheet was yet not filed nor the cognizance was taken by the Magistrate, the prosecution had been appearing in this case and never informed that challan has been prepared. Moreover, the accused is not availing the investigation or F.I.R. on account of any discrepancy in the evidence collected by the State. His case throughout had been of false implication. There is in fact not an iota of evidence available against the accused.

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Held, therefore, the prosecution cannot be permitted to over reach the jurisdiction of the Court nor the prosecution can be permitted to make a capital out of the fact that challan has been filed even though the petition was pending."

11.In view of the above said decision rendered by the Delhi High Court, the position of law is clear to the effect that quashing the first information report is maintainable in respect of filing the charge sheet during the pendency of the petition for quashing. In this case, the petitioner has come forward with this petition for quashing on 25.10.2006 itself and only during the pendency of the same, the charge sheet was filed on 04.01.2007.

12.Justice Ratnavel Pandian (as he then was) in Jagannathan Vs. State (1983 LW (Crl.) 250), held as follows:

"7.In this context reference can be made to the decision of the Supreme Court in Hussanaira Khatoon Vs. Home Secretary (1980 S.C.C. (Crl.) 35 = (1980) 1 S.C.C. 93), wherein their Lordships, while examining the scope of the Code, have expressed their view as Section 468 follows:

"It is, therefore, to be seen that the under-trial prisoners against whom charge sheets have not been filed by the police within the period of limitation provided in Sub.S (2) of S.468, cannot be proceeded against at all and they would be entitled to be released forthwith as their further detention would be unlawful and in violation of their fundamental right under Art.21."

Sub-Ss.(5) and (6) newly introduced in S.167 of the new Code are only in relation to a case triable as a summons case, that is a case relating to an offence punishable with imprisonment for a term not exceeding two years. Of the summons cases, some are non-cognizable and bailable, and some of the offences, viz., the offences falling under Ss.163, 170, 241, 254, 267, 295, 453 and 461 I.P.C. are cognizable and non-bailable. No doubt, sub-S.(1) to (4) of S.167 cover both warrant cases and summons cases. It is to be noted that whilst, as per proviso (a) to sub-S(2), a person accused of an offence either in a warrant case or in a summons case, is entitled to be released on bail on the expiry of 90 days or 60 days, as the case may be, the said proviso does not ipso facto stop the investigation. But the framers of the Code have put a deadline of six months' period for completion of investigation in a summons case from the date of the arrest of the accused, obviously with the aim of eradicating the malady of protracted investigation of such offences, unless the officer making the investigation satisfies the Magistrate concerned that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. Sub-S.(5) impose statutory duties, one on the Court and another on the investigating officer. As per the first part of this sub-section, if the investigation in a summons case is not concluded within a period of six months from the date of the

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arrest of the accused, there is a statutory duty on the part of the Magistrate to make an order stopping further investigation into the offence and as per the second part of the sub-section, if the investigating officer wants further time beyond the period of six months for continuing the investigation, he is statutorily obliged to satisfy the Magistrate that the continuation of the investigation beyond such period is necessary for special reasons to be mentioned and in the interests of justice.

9.The Crl.P.C. 1973 (Act II of 1974) has introduced drastic changes keeping in view, among others, certain basic principles, viz., that an accused person should get a fair trial in accordance with the accepted principles of natural justice, that every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to the society and that the procedure should not be complicated and should, to the utmost extent possible, ensure a fair deal to the poorer sections of the community. It is a patent fact, and one should not feel shy to admit, that a number of under-trial prisoners are kept behind the bars for long periods mainly due to the non-completion of the investigation within 90 days or 60 days, as the case may be, as envisaged under S.167(2)(a)(i) and (ii). Secondly, detention for 90 days or 60 days, as the case may be, are entitled to be released on bail, a number of them, who are very poor and practically indigent and who do not possess sufficient means or have no means to furnish bail, have to suffer incarceration silently even in summons cases till the cases are over, and in certain cases they have to be in detention for even longer for even longer periods than the maximum term of imprisonment provided under the concerned penal provision without their trial having been commenced. It would not be out of place to mention here that more often than not, Courts impose heavy sureties and put stringent conditions without consideration of the relevant factors and the principal purpose of bail. The indigent under-trial prisoners who could not afford bail have necessarily to be in cellular confinement till the disposal of the cases whether they are summons of warrant cases, and they are very often treated like the convicted criminals, despite our treasured principle of criminal jurisprudence that an accused is presumed innocent until proved guilty. In the present day social outlook, there is a deep thinking that the orthodox pattern of releasing the accused on heavy surety bonds which could be furnished invariably only moneyed people should be changed and we should stimulate a more basic change in the system of releasing the under-trial prisoners on bail, mainly taking into consideration the stability and community roots of the accused in the society and the satisfaction of the Court that there would be no risk of their non-appearance during the trial of the cases, etc., in case the Court considers it necessary to impose any condition, it can do so as contemplated under S.437(3) of the Code. In this context, reference can also be had to Sub-S.(6t) of S.437, which enacts that a Magistrate trying any case of non-bailable offence should release the accused on bail if the trial is not concluded within a period of 60 days from the first day

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fixed for taking evidence in that case, provided the accused is in custody during the whole of the said period, unless for reasons to be recorded in writing the Magistrate otherwise directs. Of course, in all situations, it is imperative on the Courts to examine the nature of the offence committed by the accused and its impact on the society and the mode of the execution of the crime, etc., to see whether the accused deserves to be released on bail or not. If the Courts insist on the under-trial prisoners, even if they are indigent, to furnish heavy sureties, practically such accused would be deprived of the benefit of getting bail for the simple reason that they are caught between the jaws of poverty. In such circumstances, they are constrained to think that money is the key to open the exit gate of the jail and that only the moneyed people own key. Therefore, I am of the view that Courts, while considering the applications for bail, should bear in mind that neither the accused is a hostage of the prosecution till the investigation is over, nor should the surety demanded for his bail partake the nature of a ransom.

12.Under the statutory provision viz., S.167(5), there are statutory duties, one cast on the Court and the other on the investigating officer. For the invocation of this sub-section, the following conditions should be satisfied:

(1)The case to which this provision is to be applied, should be one triable by the Magistrate as a summons case;

(2)The accused in that case should have been arrested; and

(3)The investigation should not have been concluded within a period of six months from the date of the arrest of the accused.

If these three conditions are satisfied, the Magistrate before whom the case is pending, is statutorily obliged to make an order stopping further investigation into the offence, unless the officer making the investigation by application satisfies the Magistrate that for special reasons and in the interests of justice the continuation of investigation beyond the period of six months is necessary. Therefore, there is a statutory duty laid on the investigating officer to satisfy the Magistrate that for special reasons (not general reasons) and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. The question is whether these duties cast on the Court and the police officer are not independent of each other. A careful examination of the section shows that the duty cast on the police officer is to be performed earlier in point of time to the duty of the Magistrate. This could be explained by an illustration. Suppose that an accused has been arrested in a case triable as a summons case on 1st January, 1982 and the investigation is continued, as per section, the Magistrate can stop the proceedings of the investigation on the

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expiry of six months viz., immediately after 1st July, 1982. But, the officer making the investigation, in order to get the permission for continuing the investigation, beyond the period of six months, should necessarily approach the Court and satisfy it, for special reasons and in the interests of justice, that the continuation of investigation is necessary. Therefore, it is the incumbent duty of the police officer to approach the Court even before the expiry of the six months' period, that is, on or before 30th June, 1982 because once the period of six months expires, the Magistrate can stop further proceedings and in that case, the question of approaching the Magistrate seeking permission for continuation of the investigation does not arise. The only remedy open to the investigating officer, when the investigation is stopped by an order of the Magistrate on 1st July, 1982, is to approach the Sessions Judge by resorting to sub-S.(6) of S.167 by filing a revision. Thus, it is clear that the officer making the investigation has necessarily to move the Court before which the case is pending, for an order permitting continuation of the investigation beyond the period of six months, before the Magistrate discharges his duty, which comes only after the expiry of six months. It follows that these two duties cast on these two functionaries are independent of each other."

13.The Hon'ble Supreme Court held in State of Haryana vs. Bhajan Lal (1992 SCC (Cri) 426) framed guidelines for quashing the first information report and one of the guidelines is as follows:

6.Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

14.Therefore, in view of the above said settled principle of law laid down by the Hon'ble Apex Court as well as this Court and Delhi High Court, this Court is of the considered view that allowing the proceedings to continue in respect of the specific contravention of the mandatory requirements under Section 167(5) Cr.P.C. would amount to a clear case of abuse of process of law and as such, the entire proceedings is liable to be quashed and accordingly, the proceedings pending on the file of learned Judicial Magistrate, Alandur in C.C.No.23 of 2007 for the alleged offence under Section 12(1)(b) of Passport Act is quashed. The Criminal Original Petition is allowed. Consequently, connected M.P. is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Judicial Magistrate, Alandur.

2. The Inspector of Police,
   Airport Police Station,
   Chennai.

3. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. V.Krishnamoorthy, Advocate SR NO.10099

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